

**Business Litigation Section November 15, 2001**  
**Hands On Seminar: Using Technology At The Federal Court<sup>1</sup>**

**INTRODUCTION**

The Federal Court has several technology tools that can help you present your case to the judge or jury more effectively. The purpose of this seminar is to introduce you to this technology and let you try it to see how relatively easy it is to use – with a little practice. Once you know how to use the equipment, you can decide when, whether and how to use it for your particular case.

It is certainly justifiable to decide to present a case with standard hardcopy exhibits and a few blowup exhibits without any added technology because you decide that is the most effective way to get your message across for that case; it is a disservice to your client, however, if you decide to present your case without the benefit of technology simply because you do not know how to use that technology or do not know what it can do for you. That is what this Seminar is about. We will also introduce you to two popular trial presentation programs, Trial Director and Sanction in addition to Power Point.

**THE EQUIPMENT**

Courtrooms at the Federal Court are equipped with viewing monitors for the judge, the jury, the witness and for each of the counsel. How can you show evidence using those monitors? You can present evidence from a VCR tape through the Court's VCR. This is not very different from the VCR you have connected to your home TV other than that at the Court you can use the preview monitor to find the right part of your

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tape before you show it to the jury. You can project evidence, such as the hard copy of a document or photo or x-ray or even a three dimensional object such as a small machine part, through the Document Camera; finally, you can present evidence from a computer - yours or in some of the Courtrooms, at your option, using the Court's computer at each counsel table. The evidence on your computer might be stored on your hard drive, on a diskette, a CD-ROM or some other storage device. That evidence might include photos, documents, synchronized digital video depositions or clips, Power Point presentations, and animations.

The Court also has video conferencing in Courtrooms 1 and 4 so that you can have a witness testify live and, perhaps, see exhibits from another location. See discussion on videoconferencing below.

### **USING THE COURTROOM EQUIPMENT**

The Court has a manual entitled "Litigant's Manual for Courtroom Technology" which we will provide to you in this Seminar. Therefore, we will not repeat here what is covered in that manual, but we will "teach" that information to you at the Seminar by having you use the equipment. We address here other issues that are relevant to using technology in the Courtroom. One point we will make here is that while you may control your computer, the VCR and the document camera, the judge or his courtroom deputy control whether what is showing on your computer, the VCR or on the document camera projector will appear on the courtroom monitors. Thus, if you want what is appearing on your computer to appear on the court monitors, you need to ask the Court to activate your station. Also note that the judge has to separately activate the jury's monitors (this makes

it less likely that a document that is not a full exhibit will be shown inadvertently to the jury). Thus, it is worth checking with the Court to see if the jury's monitors are activated (and note that every time the judge changes which station is activated, for example switching from your station to the lectern or to opposing counsel's table, the jury monitors are automatically turned off). If you are working with the document camera or VCR, you need to ask the judge to activate the lectern station once you are ready to show your first document or VCR tape (you can get the first document, photo or VCR tape in position if you want before you ask the judge to activate the lectern).

**DO I USE THE TECHNOLOGY AT ALL AND IF SO, WHAT EQUIPMENT AND SOFTWARE DO I NEED?**

**a. Do I Use It?**

While it is possible in a large document intensive case that the Court might require you to use some of the technology, the Court's rules, at least not yet, do not require you to present evidence using any of the technology. The primary reason you should consider using the technology is because it may allow you to present your evidence more effectively and more quickly. A quicker presentation may help you better keep the judge or jury's attention. Further, an electronic presentation may allow the jury to see exhibits at the same time a witness is testifying and thereby better understand the testimony. In the right case, the technology could be the difference between winning and losing, not because it makes your underlying case stronger; rather, because it increases the chance the jury will understand and pay attention to every point you are making.

Imagine presenting a case where you are showing a witness fifteen documents to make a particular point. If you are using hardcopy exhibits, you must decide whether to

interrupt the flow of your examination by publishing each exhibit to the jury before moving to the next exhibit or whether you wait until you have completed using all fifteen documents. If you wait to publish the fifteen exhibits until the end of the examination, you might find the jury did not follow the witness's oral testimony and missed the point you were making. Thus, when the jury is eventually allowed to review the documents, the jury might still miss the point of the examination.

Now, instead of a regular paper trial, imagine the same examination using the Court technology. Assuming your exhibits are full exhibits (ID has already been stricken), imagine presenting the document images from your computer to the witness and to the jury at the same time. While you question the witness, you ask the witness to focus on a line or two in a particular document. With a couple quick movements of your mouse, you extract those two lines from the document and enlarge them for easy reading and emphasis. The witness and the jury understand the point. You move on to the next document. No wasted time separately publishing documents to the jury as they are seeing the documents at the same time your witness is. Much less risk that you lose your jury to daydreams or confusion.

By using the technology, you have kept the jury more involved as the testimony progressed and the jury will better understand the oral testimony about some document or photograph because they heard the testimony at the same time they saw the relevant document. You have probably also saved a significant amount of time using the Courtroom monitors because the jury followed along with you and the witness and you did not have to publish the documents to the jury afterward (or during the cross).

We think you will agree that your case will be stronger, clearer, and more concise, when the fact finder, whether judge or jury, can see the relevant exhibit at the same time the witness is testifying. That's the advantage of the technology. Similarly, when you are presenting an opening or closing, being able to use visuals such as photographs may make your message more compelling. Presenting the photos on the computer monitors may allow you to show more photos and documents than you could if you otherwise had to blow up each document you wanted to use.

**b. What Equipment and Software Do I Need?**

Let's begin with the document camera and the VCR. For the document camera, you don't need anything but the exhibit you want to use and the knowledge of how to use the document camera. As with all the Court's technology, we **STRONGLY** recommend that you practice or try out all your evidence and computer equipment in advance of the trial. If you are going to show a text document, will the jury be able to read the relevant parts on their screen? For example, as wonderful as the document camera is, you may decide that with a particular piece of evidence, some other method might be better. Thus, don't assume, even with equipment as simple as the document camera, that there is no need to try out the equipment before trial. Plus, if it has been a while between your training on the equipment and the date of your next trial, you may find that you get rusty. That's another reason for practicing before trial. The Court personnel are very cooperative and helpful. They want you to use the equipment and want to help you.

With the document camera you will probably find that it is not the best way to show an entire page of text to a jury. Thus, you may want to show the entire page briefly, and then enlarge the part of the document you want the jury to see.

Be sure to learn in the Seminar how to use the “freeze” function. This is explained in the Court’s Manual, but we made a few hand-written additions to that part of the manual for clarification. If you use the freeze control every time you move a document on the document camera, whether putting the document on the document camera or taking it off, your presentation will look much more professional.

The VCR is not much more complicated than your home VCR but, of course, if you are going to use it, you must have a VCR tape. That’s all you will need. Keep in mind that when a VCR presentation is prepared on a particular size monitor, it may appear differently on different size monitors. Thus, you might find that if you created, say, a day in the life video that incorporated still photographs, some of the faces or objects in the video may appear slightly different on the Courtroom monitors. Thus, as simple as the VCR may be, try out your actual video on the Courtroom VCR in advance of trial. You may decide, for a particular tape, that instead of running the VCR tape through the Court monitors, it might appear better (or worse) with an electronic projector (the Court has one or more such projectors and you can check to see if the Court will let you use it or you can rent or buy one but they cost approximately \$1500 and up). In the Seminar, we will have you practice with the VCR using the preview monitor to reach the correct part of the tape before you show it to the jury.

**What about presenting documents through your computer or the Court’s computer? What hardware and software do you need? Where are the documents stored?**

a. **Hardware.**

Note that Courtroom 4 has computers at each of the counsel tables and at the lectern, but not all of the other Courtrooms do. In those other Courtrooms without

counsel table computers, you will need to bring your own computer if you want to present computer based evidence. Even in Courtroom 4, you may want your own computer.

In all the courtrooms, you need to bring your own computer cables. The Court's Litigation Manual for Courtroom Technology lists the cables you will need to use in Courtroom 4, but the list is over inclusive (you only need the VGA Cable, the mouse and keyboard cables and the audio cable, and perhaps the Y splitter if you only have one mouse/keyboard port). The other cables listed in the manual might be needed if you were connecting some other device in addition to your computer. If you are in one of the Courtrooms, such as #1, that does not have computers at counsel tables, you will only need, in addition to your own computer, the VGA cable and audio cable listed in the Court's Manual. Be careful in purchasing your cables to make sure you have the correct male/male or female/male connections called for by the manual and even then, test your cables in the courtroom to make sure the Court has not switched its connections and to make sure you do not have any bent pins etc.

You may find it easier to obtain some of the cables (e.g. the mouse and keyboard cables, male to male) by ordering on the Internet, for example at [www.cablestogo.com](http://www.cablestogo.com). We were unable to find those particular cables in any computer or electronics store in Concord. So, do not wait until the last minute to buy your cables or to verify that they work.

As for what your computer should have for a processor, memory, storage and other features, that depends on what program you want to use and how much information you intend to store on your computer (for example, digital video uses a lot of storage

space). For these issues, review the hardware requirements and recommendations for the particular software program.

b. **Software, Generally.** Lawyers often wonder what kind of software program they need to make images appear on the Courtroom monitors to present “evidence” by computer. The short answer is that if you can make a document, or photograph, appear on your computer screen when you are not connected to the Court’s public display system (PDS), then you can make that same image appear on the Court’s monitors, using your existing computer, without any additional software. We will have you try this at the seminar.

Thus, for example, if all you wanted to do was present twenty photographs through your computer, you could probably store all those photos in a file folder on your computer and then call up the photos as you need them. Chances are good that your computer already has one or more programs that can open photographic images (regardless of whether the photograph is stored in PDF format, as a TIFF file or as JPEG or other format). For example, most computers are loaded with Microsoft “Paint” which will open photographs and you can use Adobe Acrobat to open documents and photographs stored in PDF format. In a simple case like that with twenty photos, you could connect a scanner to your computer at the office and scan the photograph (or documents) onto your hard drive. For larger jobs, consider using a scanning/document imaging company (cost is typically around 17 cents per page for text documents and a few dollars per page for photos). Put your twenty photos all in one folder on your computer for easier access and use at trial. Just make sure you know the name of the file



folder and how to quickly find it at trial. If you do not know how to set up folders, review your Windows manual or ask someone to show you.

As you scan the photos in, your computer scanner program will ask you what format you want used. Some recommend that people use JPEG (or .JPG) for photos and Tagged Image File Format (.TIF) for documents. There are advantages to using TIF for documents and JPG for photographs having to do with file size and ease of use. Other formats, however, such as PDF can work too.

Your scanning program will also ask you to specify the photo quality (typically measured in dots per inch). Use at least 200 dots per inch, but not necessarily higher resolution if you find the resolution at 200 to be adequate for the particular point you want to make with the photo. The higher you go (e.g. 300 dpi), the greater the quality, but with that comes a downside. The higher you go above 200 dpi, the more space the photo will take on your computer and the slower it will load. You can experiment with different quality to see what will work for your particular case and for your particular computer (older, slower computers, for example, might be too slow to display a photo scanned in at very high resolution). Try your photo on the Court system to see how the larger image will look on the Court's monitors and how quickly it will load. Also, if your scanning program gives you options, scan in 24-bit color. For scanning text documents, talk to your scanning company about the DPI they propose to you and ask to see a sample on disk. You will need to have enough quality in the scan so that the jury and witness can easily read the document on the monitors. The recommended DPI may be different from what you need for photos.

Once you have scanned all the photos and placed them into a single file folder on your computer, you might want to create a “short cut” link from your Windows computer Desktop to help you get to that folder quicker. That’s easy to do, but talk to your office computer expert if you don’t know how. He or she can create the short cut in seconds. Alternatively, you can place the file in “My Documents” which, in turn, typically has a Desktop icon. If you use the “My Desktop” option, as we will in the seminar, you simply double click on the “My Desktop” icon, look for the file containing your photos and double click on that file. Then click on your first photo when you are ready.

One of the problems presenting documents without a litigation presentation program is that everyone sees what’s on your computer screen. Thus, once you close out one photo, your computer screen will revert to and show your Windows Desktop or the contents of your file folder depending on from where on your computer you opened the photo. Between photos you could ask the Court to de-activate your station from the PDS until you load the next picture (for example, ask the Court to switch to the lectern). However, the Court will probably grow tired of that procedure quickly and you might want to explore whether there is a way to revert to a blank page between photos or documents.

c.     **So why bother with a litigation program?** If you do not need to buy a document presentation program to present computer images, why do people buy “litigation” programs such as Trial Director or Sanction? The simple answer is that these programs, once you learn to use them, will help you organize your materials (and your “materials” might consist of many different types such as photographs, documents, video clips, computer animations, etc. and may not be limited to a few documents or photos)

and help you locate them more quickly. The trial presentation programs also allow you to place multiple documents on the screen, to zoom in and out, to rotate documents, to quickly move between pages, to mark the document (with highlighters, arrows, underlining, etc.) and to expand a portion of a document for emphasis and ease of reading. In short, these programs will do a lot for you and the better you learn the particular program, the more it will do for you.

Additionally, once your computer is connected to the Court's system and the Court activates your computer location, as mentioned above, what shows on your computer screen is what everyone else sees. Thus, as discussed above, if you are working from your computer "Desktop," everyone whose monitor is turned on, will see that desktop or whatever else is showing on your computer. By contrast, litigation programs such as Trial Director and Sanction, two of the programs that you will use at the Seminar, start with a blank, black screen. You call up the particular document, video clip, photograph, PowerPoint presentation, or animation by typing in the document ID for that material or by using a bar code reader (Note that some or all of the courtrooms have a bar code reader or scanner for calling up documents as well as a light pen for marking documents on the monitors).

Additionally, if you want to work with multi-page documents, litigation display programs are easier to work with. Also, if you or the witness marks up an exhibit shown from your computer, the litigation presentation programs allow you to capture and save that image and later print it if you choose. That way, you could mark the altered document as a separate exhibit if you decided it was important to do that.

In sum, while you can present documents from your hard drive (or other storage source) without a litigation software package, you may want to step up to a trial evidence presentation program such as Trial Director or Sanction. These are discussed further below. You can also use PowerPoint but it is much more limiting and linear and does not work as easily with multi-page documents. Thus, many litigators use PowerPoint for linear presentations such as an opening or closing. You can insert text you type, or insert existing documents, photographs and digital video into Power Point.

#### **d. Power Point**

Suppose you want the jury to see some of the evidence in your opening or closing and you don't own one of the trial presentation programs such as Sanction or Trial Director. In that case, you might want to use the Power Point program. In fact, even if you have a trial presentation program, you might decide to use PowerPoint for opening or closing. Your computer may have come with the PowerPoint program or you can use the Court's (in which case you will want to copy your presentation to a diskette). It will be much easier for you, however, if you can use your own copy of the program because you may want to scan documents into the program and that will be easier at your office than at the Court. Additionally, you will want to improve your draft Power Point presentation and, again, that will be easier to do in your own office.

Basic Power Point is very easy to learn especially when you are not trying to use all the flashy effects Power Point is capable of and, in fact, you probably should not attempt to use the fancy features for Courtroom presentations. For example, while you might find it fun and even influential on your jury to add soft, sad music playing as you

show the personal injury photos of your client, the Court probably will not allow it (perhaps there will come a point when the Court will have a list of allowed music that would add interest without adding unfair prejudice). When it comes to Power Point in Court, keep your presentation simple to avoid evidentiary objections. Also, as a general rule, we recommend you never use clipart for Court presentations – it usually falls flat. *POWER POINT FOR LITIGATORS* published by the National Institute for Trial Advocacy (NITA) \$59.95; (tel 800-225-6482 and web at [www.nita.com](http://www.nita.com)) is an excellent, easy to use instruction manual to use for Power Point. If you plan to use PowerPoint in court, seriously consider this book. The book comes with a CD-ROM disk that allows you to create mock Power Point presentations for practice. We will use some of these CD-ROM materials in the Power Point presentations you will run at the seminar.

If you use PowerPoint, be very careful to use words sparingly. You may recall attending some Seminars where presenters overused PowerPoint and included far too much text. That seems to be a frequent problem with people using PowerPoint. Similarly, even if you put relatively few words on each slide, if you feed the jury slide after slide of text, that can quickly become boring too. The most persuasive PowerPoint Presentations include a variety of photos, very limited written text, and an effective oral presentation.

In selecting font type and size and background colors, be sure to review the NITA book referred to above. Some fonts and colors do not look good when a slide is expanded from the size of your computer monitor to the size monitors used by the Court or on a projection screen. For example, Times New Roman typeface, which seems to be the default typeface for Power Point and the one that many people use (and which this

seminar handout is typed in), will look fine on your computer but will not look as good on the larger court monitors. Instead, you should use one of the sans serif typefaces such as **Arial** or **Tahoma**. For slide colors, it is best to keep one color theme throughout your presentation. Also, for the background or frame of your slides, do not select a light color as those may look good on your computer screen but will tend to fade with larger monitors or on projection screens. According to the NITA book, dark grays, greens and blues work well for the background frames. However, the area where any text boxes are, such as titles or bullets, should, according to the book, be white, light yellow or a “quiet pastel” to contrast with the darker background.

With that NITA manual, you can look through the table of contents, identify what type of presentation you want to make, and go to the specific chapter you need. It is very easy to create a basic PowerPoint presentation consisting of small amounts of text (or “bullets”) and photographs by following that book’s step-by-step guide. You do not have to read the entire book to present a basic program. As you desire to make more advanced presentations (for example, incorporating a video clip into your Power Point presentation, you can read the rest of the book).

One word of caution: At pages 290-292, the authors describe a PowerPoint add on called “ANIX.” That enhancement to PowerPoint made it easier to work with multi-page documents and perform other functions that basic PowerPoint could not do well. However, since that book was published, the software company no longer sells or supports that program. Thus, do not assume you can use ANIX.

Even if you do not personally want to take the time to create your own Power Point presentation, you probably can find someone in your office who can create it for

you with instruction from you as to content. Alternatively, you could prepare the basic presentation and then have a more experienced user add the various enhancements such as slide automation. At trial, all you will have to know how to do is open the file containing the particular presentation in it (i.e. a few clicks of your mouse). Open one menu called “slideshow” and click on “view slideshow.” Each time you are ready to go to the next slide, simply hit the enter key. It’s that simple. We will show you at the seminar, how to run an existing Power Point presentation.

e. **Trial Director and Sanction**

These are two competing programs that you will try at the Seminar. They both work well. Trial Director, a product of In Data Corporation, also comes with the companion programs Document Director and Deposition Director (as part of the “Director Suite”). The Suite for version 2.3 is \$395.00 per copy or for the new version 3 is \$595. For more details, visit the In Data website at [www.indatacorp.com](http://www.indatacorp.com). The Court’s computers have an earlier version of Trial Director if you want to use that.

Sanction is a trial or evidence presentation program sold by Verdict Systems, LLC. For more details, visit the website at [www.verdictsystems.com](http://www.verdictsystems.com). Sanction I is \$395 per copy and Sanction II is \$595. per copy.

Both of these competing programs, Trial Director Suite and Sanction, are stand alone programs. You do not need to buy Summation, Concordance or CaseMap to make them work. Those programs have independent value (one of your presenters uses and could not live without CaseMap) but do not mistakenly assume you need to buy those additional programs to make Courtroom presentations (some of which programs are expensive and some of which are less costly).

You can order or download demonstration copies of Sanction and Trial Director Suite free, but its better to ask those companies to send you the CD ROM version as that will contain the video deposition samples too.

If you buy either of these programs, we suggest you find someone who uses the particular program and can show you the basics or buy some training. The programs are powerful, but, like any new program, it can be hard to get started without some guidance. Once someone shows you the basics, however, you will find that the program(s) is not as difficult as it (they) seem at first. Then, when you are ready, you can study the program to go beyond the basics and make the program more and more effective. Having said that, the people at Verdict Systems advertise that their new product can be learned now in a few hours.

If you are getting started with these programs, one of the features one of your presenters found confusing (at least with Trial Director) was what ID numbers to use and where to store the documents. Do you put them on your hard drive, on a CD ROM, or your firm's network servers? If you copy the files from your network to your laptop, will the program know how to find the documents or will you have to tell it to look for documents on a different drive?

Despite the confusion one of your presenters faced with ID numbers, you will find that that is not a difficult task once someone explains it to you (such as one of the document scanning services associated with your particular software). Verdict Systems (Sanction) says their document ID system is very easy to use as is the decision of where to initially store documents on your computer system.



As for where you store the documents, if you have multiple people in your office needing access to the case, you might store the documents on the network server. Then, from that you could download copies to your local hard drive or CD ROM if you need to work with the program away from your office or in Court. The programs can each deal with the fact that the documents are now loaded on a different drive.

At the seminar, we will have you presenting complete images of documents, photographs, digital video, and even animations. You will highlight and expand parts of documents on screen that you might want to highlight to the “jury.” You will learn how to do these tasks with a couple minutes training. After that, you may find it hard to go back to the old ways of trial presentation.

Some of you may wonder about the cost of creating the digital video depositions integrated with the deposition transcript on CD ROM that you will be using at the seminar. The rates may vary for different companies but Verdict Systems (the Sanction company) advertises that it will put up to two hours of digital video on a CD ROM for \$50 per hour and if you want synchronized transcript, they charge \$75 per video hour. Thus a two-hour deposition would cost about \$250 and from that, you could make shorter clips if you wanted. While many depositions go more than two hours, you might only decide to convert part of the videotape to CD ROM. These costs are in addition to whatever you paid your original videographer and your court reporter. At least with Sanction, you or your paralegal can synchronize the video and transcript yourselves and thus your only direct cost would be the \$50 per hour charge of converting to a videodisc. Then again, neither your time nor your paralegal’s is free.

### **Video Conferencing**

Courtrooms 1 and 4 have video conferencing. How do you use it? First, as early as possible, contact the Courtroom deputy assigned to your case and inform her that you would like to use the video conferencing for one or more witnesses at your trial or hearing.

On your own, you need to contact a company at or near the location of your witness, which does video conferencing (e.g. Sprint, Kinko's etc.). As long as the location is in the U.S., the Court will initiate the phone call (video conference) at the day of the hearing or trial (and in the test run which you need to schedule in advance of trial) and, therefore, you will not pay the phone charges. Therefore, when you talk to the videoconference company about their pricing, make sure they understand that. The video conferencing company, however, will charge you for the use of their office space and equipment (including a cost for tying up their bandwidth). You may want to shop around on pricing and equipment. If the witness location is out of the country, you will pay the phone charges not the Court. Explore that in advance, as it could be very expensive. As to how much time to reserve, keep in mind that it is difficult to know in trial exactly when a witness will testify. Ask the Court if the videoconference witness can testify out of turn if needed. If not, you need to reserve more time for your witness than you think you and your opposing counsel will need. In that regard, you need to talk to your opposing counsel about how long he or she expects cross-examination will last. Otherwise, you need to reserve lots of extra time for whatever time the cross may take.

If the witness will be shown any documents from our Court location to the location of the witness, determine what kind of monitor or monitors the videoconference

company uses. Then talk to the Case Manager (who will in turn probably talk to the Court's "PC Systems Coordinator," Bob Davenport) to see if it is likely documents will be readable by the witness using that particular monitor (it will still be up to you, however, not the Court, to make sure the documents can be read on the other end and Court personnel may prefer not to advise you on these issues). Many companies apparently just use large TV screens, not quality monitors, and the TV screens do not display documents well. This is something you need to ask when selecting the video conferencing center you will use.

If you want to show the witness a document from the Courtroom, you can do that through the document camera, but keep in mind not only the monitor issue discussed above, but also the fact that the projectors do not display an entire document well. Thus, if you want to show the witness a single paragraph, the projector may work fine; if you want him to read several complete pages, you may not want to use the projector.

Consider the possibility of shipping a set of exhibits to the witness so he or she can have a full set at the witness location. Ask your opponent to do that as well with any anticipated cross-examination exhibits. If you plan to use many documents with the witness, the Court may even require that the parties send the witness a hardcopy of the exhibits. For any new documents that come up at trial which were not previously sent to the witness location, you may need to rely on a fax machine at trial to get the documents to the witness. Thus, verify your conference center has an adequate fax machine.

Also verify that your videoconference center can handle a connection rate of at least 384 Kilobauds. While the Court can connect with the other site at a slower speed, you will not have full motion video.

Finally, you should plan a test call to your videoconference center from the Court. You need to coordinate that and make sure it's included in your price. Again, if you (and don't forget your opponent here) are using documents on the document camera rather than shipping a set of exhibits to your witness, be sure to check the readability of documents on the other end. Query, if the documents do not look good, will your videoconference center tell you and risk losing your business? You may want to hire a paralegal from a law firm near the videoconference center to check readability at that end and perhaps to assist with the witness at the time of trial.

Do not forget to consider whether you should subpoena the witness to the videoconference center. As you know, in federal court it is extremely easy to subpoena witnesses in other states to attend a hearing or deposition in that other state for your case. You do not need to be admitted to that other state's bar, you do not need out of state counsel, and you do not need an order of the court.

Also, as with any witness, you need to think about scheduling issues. It is bad enough having to keep a witness in the back of the courtroom for an extra two hours because you were unable to know exactly when you would need the witness. It is a greater problem when your witness is sitting in a videoconference center you are paying for and for which you may only have reserved for a limited amount of time before the next user has scheduled the conference center. Thus, you may need to rent more time, in advance, than you may ultimately need. You should have someone on your trial team in contact with the witness and videoconferencing center to keep them abreast of the timing of the testimony and to make sure everyone is set at that end.

### **Getting Ready for Your Trial**

We cannot stress enough the need to do a test run with your equipment and evidence in the Courtroom. It is likely that you may find some small glitch that is easily corrected with a little thought. Having these problems occur at trial, however, is a more serious problem. Some small glitches we experienced, for example, in preparing for this seminar, included a bent pin on one of the cables, the failure of sound on a video clip to feed into the Court sound system, and even all the monitors going blank when one of our lap top screen savers came on. We cannot stress enough the need for you to know your own computer. Have you ever actually read that manual that came with your computer? For example, do you know how to increase the sound? Do you know how to turn off your computer screen and use the Court's screen while your computer runs? Do you know how to find files when you are away from your computer network?

Apart the potential for minor glitches, keep in mind the possibility for catastrophic failure (for example, a failure of a CD ROM drive or your hard drive). It is a good idea to have a second identically configured computer available in a case of a crash. And, of course, you should be prepared to switch to the old fashion method if all your computers fail you. At least with the Sanction product (perhaps with Trial Director, but we have not verified it) the user license allows you to copy the program onto a second computer for no extra charge (as long as it is being used by the same user).

### **Anticipate Evidence Issues Before Trial**

Our Federal Court is at the forefront of Courtroom technology and very receptive to litigants using that technology. However, you may want to discuss evidentiary issues and raise those with your trial judge in advance of trial. For example, one of the great

things Trial Director and Sanction can do is take a portion of a document and allow you to highlight it, blow it up, underline it, point to it, etc. This can be a very effective tool at trial, but you may want to talk to your trial judge in advance in an early conference about technology and evidence issues.

If the basic document is already a full exhibit, is that enough to allow you to call certain portions of the document to the witness's attention by enlarging portions of it? Probably, but not necessarily. Imagine, for example, a five-page internal company document that contains a sentence: "We were very concerned about the number of brake failures that have occurred with our product, eight of which resulted in fatalities." If that quote is a fair representation of the point of the document and if the damaging quote is not somehow undone elsewhere in the document, highlighting or blowing up a part of the document does not seem unfair or much different than having a witness read the quoted line at trial. Suppose, however, that at the end of the same internal company document quoted above, the memo contained the additional statement: "After investigation, we found that in every instance of brake failure, the product had not been replaced in 200,000 miles and in every case, the brakes had been significantly modified by untrained mechanics." In that case, could defense counsel object under Rule 403<sup>2</sup> that blowing up the first quote without simultaneously blowing up the later quote is unfairly prejudicial or misleading? Similarly, if the defense enlarged what was a tiny, hidden warning, from the middle of a product user's manual, could the plaintiff object that such enlargement violates Rule 403?

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<sup>2</sup> "Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time: Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue influence, delay, waste of time, or needless presentation of cumulative evidence."

If you are opposing a party using a computer presented document, you need to make sure that the document presented as Exhibit such and such is the same as the actual hard copy of the exhibit marked in Court. For example, the document scanned into the trial presentation program could have been made from a different copy of a document than the hard copy submitted to the Court. One copy might have had some hand-written notations, and the other does not. Be careful. The presenting attorney also has a professional duty, of course, to not display a document representing it to be the same as a marked exhibit when, in fact, it is somehow different.

Finally, just as you cannot show a hard copy exhibit to the jury if the ID has not been stricken, be careful not to call up such a document onto the monitors with the jury monitors still activated. Because the judge or Courtroom deputy activates the jury monitor, it is your responsibility when you switch from a full exhibit to an exhibit marked only for ID, to tell the Court that you are about to shift to a document that has not been admitted in evidence. Alternatively, your judge may turn off the jury monitors every time you finish with one exhibit. Explore how your judge approaches that issue. Similarly, you need to be careful to make sure you have called up the correct document to avoid the possibility you inadvertently call up a document that is not a full exhibit while the jury monitors are on.

### **Assistant at Trial?**

When you are planning for your electronic trial, decide whether you will operate the computer yourself or have an assistant there. Consider the layout of the Courtroom. Where will your computer be relative to where you want to stand when you examine witnesses, make an opening or make a closing? If you are using an assistant to call up

documents, how will you communicate to your assistant what document you want next? As with a paper trial, you may decide to change the order you call up a particular exhibit and you need to be able to communicate those changes to your assistant. Further, as discussed above, if you are using video conferencing, do you want to have a paralegal at the video conference center to help coordinate showing the witness exhibits, assisting with any glitches, etc.?

**Overview Summary of Steps at Courtroom On the Morning of Trial (Refer to Court Manual for More Specifics)**

1. Court personnel activate PDS system and Courtroom computers.
2. You connect the various cables from your computer to the Court's system.
3. Make sure powerstrip is turned on so your batteries are not being drained.

Start your computer. Note that connecting or disconnecting cables after your computer is running may cause problems. Consider whether you need to turn off your screen and rely on the Court's computer to act as your monitor, to avoid your screen saver turning off monitors in the middle of your presentation (for example if you are showing several minutes of a digital video where you will not be touching your mouse control). On one of your presenter's computers this function is controlled by holding the function key ("FN") and F6; with the other presenter's computer, it is FN plus F5. Know your computer. Read your manual. And, know in advance whether your screen saver will turn off all the monitors even if your monitor is turned off (if worse comes to worse, just remember to move your mouse once in a while).

4. Do a quick check of your computer system (i.e. that you can call up evidence and it appears on Courtroom monitors). Verify sound volume is adequate. If not, adjust your computer. (Commonly, there is a sound icon on the bottom of your



desktop screen – double clicking probably will bring up a volume control you can adjust. Alternatively up and down volume is probably controlled by a combination of the FN key and one of your function keys, for example F11 and F12; however, in preparing for this seminar, we found the F11 and F12 keys did not adequately raise the sound level and we had to use the control on the bottom of the computer screen for further sound control).

5. In performing the quick checks outlined above, verify the jury box monitors are working. Court personnel will typically do that but it will not hurt for you to have it on your checklist as well. Note that the Court has to activate the jury monitors from the bench and has to reactivate them every time the Court switches the activation from one location to another (e.g. activates a counsel table and then switches to the lectern). Verify with a few documents from your computer that the witness monitor is working properly and the documents are readable. Do not assume that because your document shows up properly on one monitor that every other monitor is working correctly. Some adjustment by the Court's technical staff may be required.

6. Using equipment during trial

A. VCR or Document Camera

With or without having Court (Judge or his deputy clerk) activate the lectern, ready your first document or VCR tape. If the Court has activated the lectern (ask if you don't know), use the freeze system when you use the document camera so you do not make your jury seasick and so you will look more professional. When you have the exhibit ready and in focus, hit the freeze button again (to deactivate the "freeze") and whatever is on the document camera will now be visible on the Court's monitors if the Court has selected the lectern as the active site. If you are using the VCR and the Court

has already activated the lectern, press the blank screen button (input 3) on the control panel near the preview monitor so all that will appear on the Courtroom screens is a blank page. Once you have your tape at the correct point, use pause on the VCR, switch from the “blank” button to the input 1 (video button) then hit play on the VCR (again, assuming the Court has already activated the lectern; if not, ask the Court to do that before you hit the play button). When you are using the document camera and want to remove a document from the document camera, again hit the freeze button before removing the document so the jury does not see your document move around on the screen. It’s very easy to forget to use the freeze button when you are removing a document even if you remembered to do that when you were putting the document on the document camera originally. Using it both putting a document on and taking it off, however, will make your presentation more professional. Once you are ready to show your document or video to the jury, verify Court has activated the lectern as the source.

B. Computer presentation

Using the control button on your computer or on the Court’s, bring up the menu that allows you to switch to your computer as the source of what appears on your computer screen.

Once your computer is ready to present evidence (e.g. you are at the computer screen you want to work from) ask the Court to activate your workstation as the source of information to the Courtroom monitors.

If you are going to show evidence to the jury, verify with the Court that the jury’s monitors are active. Call up your first document, photo, video, etc.

If you switch to a document not in evidence, advise the Court to please turn off the jury monitors.

You may want to have a printer at trial so that if you captured the image of a document you or the witness marked or highlighted etc. (which you can do with Sanction and Trial Director), you can print it during a break and mark it as an exhibit. You do not have to do this, but in some instances it might be useful.

All of the above steps may seem confusing when you read them. However, they will seem simpler at the Seminar. See you there.

Our special thanks to the Federal Court for its assistance in letting us use the Court's facilities both to conduct the seminar and to practice for it. We thank Jim Starr for his assistance and support and we especially thank Bob Davenport who loaned us his talent, his time, his cables (before we could buy our own) and put up with our many questions. We also acknowledge the assistance of the National Institute of Trial Advocacy (NITA) for allowing us to use the images on their CD ROM in connection with our Power Point presentations.

Garry and Stephanie

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